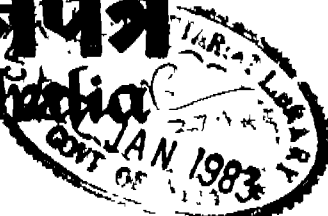



भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 9th August, 1982:—

BILL No. 103 OF 1982

A Bill further to amend the Merchant Shipping Act, 1958.

As it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. This Act may be called the Merchant Shipping (Amendment) Act, 1982.

Short
title.

44 of 1958

2. For section 2 of the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substi-
tution
of new
section
for
section 2.
Applica-
tion of
Act.

"2. (1) Unless otherwise expressly provided, the provisions of this Act which apply to—

(a) any vessel which is registered in India; or

(b) any vessel which is required by this Act to be so registered; or

(c) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of section 21 applies,

shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in sub-section (1) shall so apply only while any such vessel is within India, including the territorial waters thereof."

- Amend-
ment of
section 3.
3. In section 3 of the principal Act, in clause (37), for the **figures, letters and words "17th day of June, 1960"**, the **figures, letters and words "1st day of November, 1974"** shall be substituted.
- Amend-
ment of
section 22.
4. In section 22 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—
- 'Explanation.—For the purposes of this section, "ship" does not include a fishing vessel.'*
- Amend-
ment of
section 74.
5. In section 74 of the principal Act, for clause (j) of sub-section (2), the following clause shall be substituted, namely:—
- "(j) the fees that may be levied for the survey or inspection of any ship for the purposes of registration and the manner in which such fees may be collected;"**
- Amend-
ment of
section 87.
6. In section 87 of the principal Act, after clause (d), the following clause shall be inserted, namely:—
- "(dd) fix the fees that may be levied for survey or inspection of a ship for ensuring compliance with the provisions of this Part and provide the manner in which such fees may be collected;"**
- Amend-
ment of
section 175.
7. In section 175 of the principal Act, after clause (e) of sub-section (2), the following clause shall be inserted, namely:—
- "(f) the fees that may be levied for the survey or inspection of crew spaces and for scrutiny of plans of crew accommodation spaces and the manner in which such fees may be collected;"**
- Amend-
ment of
section 282.
8. In section 282 of the principal Act,—
- (a) in clause (w), the word "and" occurring at the end shall be omitted;
- (b) after clause (w), the following clause shall be inserted, namely:—
- "(ww) the fees that may be levied for the survey or inspection of pilgrim ships with respect to sanitary conditions, provision of stores, medical facilities available on such ships and such other purposes that may be relevant for compliance with the provisions of this Part relating to pilgrim ships and the manner in which such fees may be collected;"**
- Amend-
ment of
section 344
9. In section 344 of the principal Act, after clause (c) of sub-section (2), the following clause shall be inserted, namely:—
- "(d) the fees to be charged for the survey or inspection of hull, machinery, boilers, electrical appliances and other fittings and the materials used for their construction, fire appliances, life saving appliances, radio communications equipment, radar, echo sounding device and gyro compass, or testing or approval of any of the foregoing equipments or materials used for their manufacture, or examination of plans of construction of any part of ship's hull, machinery, electrical appliances and other equipment aforesaid and the manner in which such fees may be recovered."**

10. After Part XA of the principal Act, the following Part shall be inserted, namely:—

Insertion
of new
Part XB.

PART XB

CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

352G. This Part applies to—

Applica-
tion.

(a) every Indian ship wherever it is; and

(b) every foreign ship while it is at a port or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have, exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force.

80 of 1976.

352H. (1) In this Part, unless the context otherwise requires,—

Definitio

(a) "incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage;

(b) "oil" means any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a tanker as cargo or fuel;

(c) "owner" means—

(i) the person registered as owner of the ship and includes the operator who for the time being is in charge of the ship and the master of the ship; or

(ii) in the absence of registration, the person owning the ship; or

(iii) in the case of a tanker owned by a foreign State, the person registered in that State as operator of the ship;

(d) "pollution damage" means loss or damage caused outside the ship by contamination resulting from escape or discharge of oil from that ship, wherever such escape or discharge occurs, and includes the costs of preventive measures and further loss or damage caused by preventive measures; so, however, that the provisions of clause (a) of sub-section (1) of section 352B shall not apply to such loss or damage;

(e) "preventive measures" means any reasonable measures taken by any person after the incident to prevent or minimise pollution damage.

(2) In this Part—

(a) the expression "franc" shall have the same meaning as is assigned to it in clause (b) of section 352; and

(b) the expression "tonnage" shall mean the tonnage of a ship determined in accordance with the provisions of section 352B and where it is not so determinable, it shall mean forty per cent. of the weight in tons of oil cargo the ship is capable of carrying.

**Liability
of owner.**

352I. (1) Save as otherwise provided in sub-sections (2), (3) and (4), the owner at the time of an incident, or, where the incident consists of a series of occurrences, at the time of first of such occurrences, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.

(2) No liability for pollution damage shall attach to the owner under sub-section (1), if he proves that the pollution damage—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause such damage by any other person; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

(3) Where, with respect to any incident, the owner proves that the pollution damage resulted, either wholly or partially, from an act or omission done, with intent to cause such damage, by the person who suffered damage, or from the negligence of that person, the owner shall be exonerated wholly or, as the case may be, partially, from liability to that person.

(4) Where, in any incident, pollution damage results from escape or discharge of oil from two or more ships, the owners of all such ships shall be jointly and severally liable for all such damage which is not reasonably separable.

(5) No claim for pollution damage shall be made against any owner otherwise than in accordance with the provisions of this section.

(6) No claim for pollution damage shall be made against any servant or agent of the owner.

**Limitation
of
liability.**

352J. (1) Save as otherwise provided in sub-section (2), the owner may limit his liability under section 352I in respect of any incident to an aggregate amount of—

(a) two thousand francs for each ton of the ship's tonnage; or

(b) two hundred and ten million francs,

whichever is lower.

(2) Where any incident causing pollution damage occurs as a result of the actual fault of the owner, he shall not be entitled to limit his liability under sub-section (1).

**Constitu-
tion of
limitation
fund.**

352K. (1) (a) Any owner desiring to avail of the benefit of limitation of his liability under sub-section (1) of section 352J shall make an application to the High Court for constitution of a limitation fund (hereafter in this Part referred to as fund).

(b) Such fund may be constituted either by depositing the sum with the High Court or by furnishing bank guarantee or such other security as, in the opinion of the High Court, is satisfactory.

(2) (a) The insurer or any other person providing financial security to the owner may apply to the High Court for constitution of the fund under sub-section (1) and any fund so constituted shall have the same effect as if it were constituted by the owner.

(b) Such fund may be constituted even in cases where sub-section (2) of section 352J applies but in any such event constitution of the fund shall not prejudice the rights of any claimant against the owner for full compensation exceeding the amount deposited or secured in the fund.

(3) The amount in francs to be deposited or secured in the fund under sub-section (1) shall be converted in rupees on the basis of official value in rupees of the gold contents of franc on the date of constitution of the fund.

352L. (1) Where the owner or any of his servants or agents or— **Acquisition of right for compensation by subrogation.**
any other person providing him insurance or other financial security has, as a result of incident in question, paid any compensation to any claimant, such person shall, up to the amount so paid by him, be entitled to acquire by subrogation the rights to which the claimant so compensated would be entitled to.

(2) Where the owner or any other person providing him insurance or other financial security establishes that he may, at a later date, be compelled to pay to any person, in whole or in part, any amount by way of compensation for pollution damage caused by the incident with respect to which he would have been entitled to acquire by subrogation the right of the claimant had the compensation been paid before the fund was distributed the High Court may order that sufficient amount from the fund may provisionally be set aside to enable the owner or such other person to enforce his claim against the fund at a later date.

352M. (1) The High Court shall consolidate all claims against the fund including those arising under section 352L.

Consolidation of claim and distribution of fund.

(2) Any claim in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.

(3) Subject to the provisions of sub-section (2) of section 352L, the High Court shall distribute the amount in the fund among all claimants in proportion to their established claims.

352N. (1) The owner of every Indian ship which carries 2000 tons or more oil in bulk as cargo shall, in respect of such ship, maintain an insurance or other financial security for an amount equivalent to—

Compulsory insurance or other financial guarantee.

(a) two thousand francs for each ton of ship's tonnage; or

(b) two hundred and ten million francs,

whichever is lower.

(2) In respect of every Indian ship which maintains insurance or other financial security under sub-section (1), there shall be issued by the Director-General a certificate in such form and giving such particulars as may be prescribed

(3) On an application by the owner or agent of any foreign ship, the Director-General may issue a certificate under sub-section (2) in respect of such foreign ship on production of satisfactory evidence relating to maintenance of insurance or other financial security in accordance with the provisions of the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November, 1969.

(4) For every certificate issued under sub-sections (2) and (3) there shall be charged such fee as may be prescribed.

Acceptance of certificates issued outside India.

352O. Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November, 1969, to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

Bar on entering or leaving an Indian port without certificate.

352P. (1) No Indian ship, which has on board 2000 tons or more oil in bulk as cargo shall enter or leave or attempt to enter or leave any port or place in India unless it carries on board a certificate issued under sub-section (2) of section 352N or a certificate accepted under section 352O.

(2) No ship other than an Indian ship carrying 2000 tons or more oil in bulk as cargo, wherever registered, shall enter or leave or attempt to enter or leave any port or place in India unless it carries on board a certificate issued under sub-section (3) of section 352N or a certificate accepted under section 352O.

(3) No customs officer shall grant inward entry or outward clearance to any ship to which sub-section (1) or, as the case may be, sub-section (2) applies, unless its master produces a certificate required under the respective sub-section.

Government ships.

352Q. Nothing in this Part shall apply to any ship of war or any ship for the time being used by the Government of any country for purposes other than commercial purposes.

Power to make rules.

352R. The Central Government may make rules prescribing—

(a) the form of certificate to be issued by the Director-General under sub-section (2) of section 352N and the particulars which it may contain;

(b) fees which may be charged for issue of certificates under section 352N.

Substitution of new Part for Part XIA.

11. For Part XIA of the principal Act, the following Part shall be substituted, namely:—

'PART XIA

PREVENTION AND CONTAINMENT OF POLLUTION OF THE SEA BY OIL

Comment and application.

356A. (1) The provisions of this Part shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Part.

(2) This Part shall apply to—

- (a) tankers of one hundred and fifty tons gross or more;
- (b) other ships of five hundred tons gross or more; and
- (c) off-shore installations

356B. In this Part, unless the context otherwise requires,—

Def-
initions.

(a) "cargo" includes ballast and ship's stores and fuel;

(b) "coast" includes any island forming part of India;

(c) "coastal waters" means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, or any other law for the time being in force;

(d) "Convention" means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, signed in London on the 12th day of May, 1954, as amended from time to time;

(e) "discharge", in relation to oil or oily mixture, means any discharge or escape, however caused;

(f) the expression "from nearest land" shall mean the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, except that in relation to north-eastern coast of Australia it shall mean from a line drawn from a point on the coast of Australia in latitude 11° South, longitude 142° 08' East to a point in latitude 10° 35' South, longitude 141° 55' East—

thence to a point latitude 10° 00' South, longitude 142° 00' East

thence to a point latitude 9° 10' South, longitude 143° 52' East

thence to a point latitude 9° 00' South, longitude 144° 30' East

thence to a point latitude 13° 00' South, longitude 144° 00' East

thence to a point latitude 15° 00' South, longitude 146° 00' East

thence to a point latitude 18° 00' South, longitude 147° 00' East

thence to a point latitude 21° 00' South, longitude 153° 00' East

thence to a point on the coast of Australia in latitude 24° 42' South, longitude 153° 15' East;

(g) "instantaneous rate of discharge of oil content" means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant;

(h) "mile" means a nautical mile of 1,852 metres;

(i) "off-shore installation" means an installation, whether mobile or fixed, which is used or is intended to be used for under-

water exploration or exploitation of crude oil, petroleum or other similar mineral oils, under lease, licence or any other form of contractual arrangement and includes—

(a) any installation which could be moved from place to place under its own motive power or otherwise; and

(b) a pipe-line;

(j) "oil" means—

(i) crude oil;

(ii) fuel oil;

(iii) heavy diesel oil conforming to such specifications as may be prescribed; and

(iv) lubricating oil;

(k) "oily mixture" means a mixture with any oil content;

(l) "oil reception facilities" in relation to a port, means facilities for enabling vessels using the port to discharge or deposit oil residues;

(m) "ship" means any sea-going vessel of any type whatsoever, including a floating craft, whether self-propelled or towed by another vessel, making a sea-voyage;

(n) "tanker" means a ship in which greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

PROVISIONS FOR PREVENTION OF POLLUTION

356C. (1) No oil or oily mixture shall be discharged from an Indian tanker anywhere into the sea or from a foreign tanker anywhere within the coastal waters of India except where each of the following conditions is satisfied, namely:—

(a) the tanker is proceeding en-route;

(b) the instantaneous rate of discharge of oil content does not exceed sixty litres per mile;

(c) the total quantity of oil discharged does not exceed 1/15,000 part of the total carrying capacity of the tanker;

(d) the tanker is more than 50 miles from nearest land; and

(e) the tanker is not within the designated areas notified as such under sub-section (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976:

Provided that the provisions of this sub-section shall not apply

(i) the discharge of ballast from a cargo tank which, since the cargo was last carried therein, has been so cleaned that any affluent therefrom would, if discharged from a

Prohibi-
tions
as to
dischar-
ge of oil
or oily
mixture,

stationary tanker into clean calm waters on a clear day, produce no visible traces of oil on the surface of the water; or

(ii) the discharge of oil or oily mixture from machinery space bilges, if any such discharge is made in compliance with the provisions of sub-section (2) as if it were made from a ship other than a tanker.

(2) No oil or oily mixture shall be discharged from an Indian ship other than a tanker anywhere into the sea or from a foreign ship other than a tanker within the coastal waters of India except where each of the following conditions is satisfied, namely:—

(a) the ship is proceeding en-route;

(b) the instantaneous rate of discharge of oil content does not exceed sixty litres per mile;

(c) the oil content of the discharge is less than one hundred parts per million parts of the oily mixture;

(d) the discharge is made as far from nearest land as practicable; and

(e) the ship is not within the designated areas notified as such under sub-section (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

(3) The discharge of oil or oily mixture into the sea from any off-shore installation is hereby prohibited.

356D. Nothing in section 356C shall apply to—

(a) the discharge of oil or oily mixture from a ship or an off-shore installation for the purpose of—

(i) safety of such ship or off-shore installation; or

(ii) preventing damage to such ship or off-shore installation or cargo, if any, on board such ship or off-shore installation; or

(iii) saving life at sea;

(b) the escape of oil or oily mixture resulting from damage to or unavoidable leakage from a ship or an off-shore installation if, after occurrence of the leakage, all reasonable precautions have been taken for the purpose of preventing or minimising such escape;

(c) the discharge of oily mixture from the bilges of a ship during the period of twelve months following the date on which this section comes into force.

356E. For the purpose of preventing or reducing discharges of oil and oily mixtures into the sea, the Central Government may make rules requiring Indian ships to be fitted with such equipment and to comply with such other requirements (including requirements for preventing the escape of fuel oil or crude oil or heavy diesel oil into bilges) as may be prescribed.

Prohibition not to apply in certain cases.

Equipment in ships to prevent oil pollution.

Oil
record
book.

356F. (1) Every Indian tanker and every other Indian ship which uses oil as fuel shall maintain on board the tanker or such other ship an oil record book in the prescribed form:

Provided that different forms may be prescribed for tankers and other ships.

(2) The manner in which the oil record book shall be maintained, the nature of entries to be made therein, the time and circumstances in which such entries shall be made, the custody and disposal thereof, and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

Inspection and control of ships to which the Convention applies.

356G. (1) A surveyor or any person authorised in this behalf may, at any reasonable time, go on board a ship to which any of the provisions of this Part applies, for the purposes of—

(a) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(b) satisfying himself about the adequacy of the measures taken to prevent the escape of oil or oily mixture from the ship;

(c) ascertaining the circumstances relating to an alleged discharge of oil or oily mixture from the ship in contravention of the provisions of this Part; and

(d) inspecting the oil record book.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the ship, a true copy of any entry in the oil record book of the ship and may require the master of the ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

Information regarding contravention of the provisions of the Convention.

356H. (1) If, on report from a surveyor or other persons authorised to inspect a vessel under section 356G, the Central Government is satisfied that any provision of the Convention has been contravened anywhere by a foreign ship, being a ship to which the provisions of the Convention apply, it shall transmit particulars of the alleged contravention to the Government of the country to which the ship belongs.

(2) On receipt of information from the Government of any country which has ratified the Convention that an Indian ship has contravened any provisions of the Convention, the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention, and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or rules made thereunder, take appropriate action against the owner or master and intimate the reporting Government of the action so taken.

356I. (1) Notwithstanding anything contained in any other law for the time being in force, in respect of every port in India, the powers of the port authority shall include the power to provide oil reception facilities.

Oil reception facilities at ports in India.

(2) A port authority providing oil reception facilities or a person providing such facilities by arrangement with the port authority, may make charges for the use of the facilities at such rates and may impose such conditions in respect of the use thereof as may be approved, by notification in the Official Gazette, by the Central Government in respect of the port.

(3) Where the Central Government is satisfied that there are no oil reception facilities at any port in India or that the facilities available at such port are not adequate for enabling ships calling at such port to comply with the requirements of the Convention, the Central Government may, after consultation with the port authority in charge of such port, direct, by order in writing, such authority to provide or arrange for the provision of such oil reception facilities as may be specified in the order.

(4) The Central Government may, by notification in the Official Gazette, specify the ports in India having oil reception facilities in accordance with the requirements of the Convention.

Explanation.—For the purpose of this section, “port authority” means,—

(a) in relation to any major port, the Board of Trustees in respect of that port constituted under any law for the time being in force;

(b) in relation to any other port, the Conservator of the Port, within the meaning of section 7 of the Indian Ports Act, 1908.

15 of 1908.

PROVISIONS FOR CONTAINMENT OF ACCIDENTAL POLLUTION

356J. (1) Where the Central Government is satisfied that—

(a) oil is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; and

(b) the oil so escaped or likely to escape is causing or threatens to cause pollution of any part of coasts or coastal waters of India,

Power to give notice to owner, etc. of polluting ship.

it may, for the purpose of minimising the pollution already caused, or, for preventing the pollution threatened to be caused, require—

(i) the owner, agent, master or charterer of the tanker,

(ii) the owner, agent, master or charterer of the ship other than a tanker,

(iii) the owner, agent, master, charterer or operator of a mobile off-shore installation,

(iv) the owner, operator lessee or licensee of off-shore installation of any other type,

or all or any of them, by notice served on him or as the case may be on them, to take such action in relation to the tanker, ship other than a tanker, mobile off-shore installation, or, as the case may be, off-shore installation of any other type or its cargo or in relation to both, as may be specified in such notice.

(2) Without prejudice to the generality of sub-section (1), the notice issued under that sub-section may require the person or persons on whom such notice is served to take action relating to any or all of the following matters, namely:—

(a) action for preventing the escape of oil from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type;

(b) action for removing oil from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type in such manner, if any, and to such place, if any, as may be specified in the notice;

(c) action for removal of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type to a place, if any, as may be specified in the notice;

(d) action for removal of the oil slicks on the surface of the sea in such manner, if any, as may be specified in the notice;

(e) action to disperse the oil slicks on the surface of the sea in such manner, if any, as may be specified in the notice.

(3) The Central Government may, by any notice issued under sub-section (1), prohibit the removal—

(a) of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, from a place specified in the notice;

(b) from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, of any cargo or stores as may be specified in the notice,

except with its previous permission and upon such conditions, if any, as may be specified in the notice.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is of the opinion that the pollution caused or likely to be caused has or may present a grave emergency, proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356K.

Powers
to take
measures
for pre-
venting
or con-
taining
oil pollu-
tion.

356K (1) Where any person fails to comply, or fails to comply in part, with any notice served on him under section 356J, the Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary for—

(i) carrying out the directives given in the notice issued under section 356J; and

(u) containing the pollution already caused or preventing the pollution threatened to be caused, of coastal waters or as the case may be, of any part of the coast of India by oil escaped or threatening to escape from the tanker, a ship other than a tanker, a mobile off-shore installation or off-shore installation of any other type.

(2) Subject to the provisions of Part XB, any expenditure or liability incurred by the Central Government in, or by reason of, the exercise of powers under sub-section (1) in relation to any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type in respect of which a notice had been issued under section 356J, or its cargo of oil that had escaped or was discharged into the sea, shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person, or as the case may be, from all or any of those persons and shall be a charge upon all or any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type owned by that person or persons which may be detained by the Central Government until the amount is paid:

Provided that provisions of Part XB of this Act shall not apply to measures taken in respect of any off-shore installation which is not a ship within the meaning of this Act except that in the event of pollution damage caused by any such off-shore installation the person who is liable for the damage may claim exoneration from any liability if he proves that such damage—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause that damage by any other person; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

356L. (1) Where for the purposes of taking any measures under sub-section (1) of section 356K, services of any Indian ship become necessary for—

(i) lightening or transporting any cargo or equipment from or to the polluting ship; or

(ii) providing any assistance to any other ship or equipment engaged in rendering services under clause (i),

the Central Government may, if it deems it necessary so to do, direct, by an order in writing, the owner of any Indian ship, tug, barge or any other equipment to provide such services or assistance as may be specified in that order.

Power of the Central Government to give directions to certain ships to render certain services.

(2) The owner of any ship, tug, barge or any other equipment with respect to which an order under sub-section (1) has been made shall be entitled to tariff rates of freight and charter hire at reasonable rates having regard to current market conditions:

Provided that where tariff rates of freight are not fixed or where there is any dispute about reasonable rate of charter hire, the freight or, as the case may be, charter hire, shall be paid at such rates as may be fixed by the Director-General by an order in writing.

(3) Where in pursuance of the proviso to sub-section (2), the Director-General makes any order fixing rates of freight or charter hire, he shall determine reasonability of such rates of freight or charter hire by examining such witnesses, documents and accounts as he may deem necessary.

Oil pollu-
tion cess.

356M. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, specify, there shall be levied on every ship calling at any port in India being a ship which carries oil as cargo, a cess to be called Oil Pollution Cess (hereafter in this Part referred to as cess) at such rate not exceeding fifty paise,—

(a) in respect of each tonne of oil imported by a ship into India in bulk as a cargo;

(b) in respect of each tonne of oil shipped from any place in India in bulk as a cargo of a ship,

as the Central Government may, by notification in the Official Gazette, fix:

Provided that no cess shall be levied on a ship at any port if the ship produces evidence of having paid such levy at the same or any other port in India within a period of three months immediately preceding its present call at the port.

(2) The cess shall be collected by such officers and in such manner as the Central Government may prescribe in this behalf and shall, after deduction of such costs of collection, if any, as the Central Government may determine, be paid to such authority as the Central Government may specify.

(3) The proceeds of the cess shall, after due appropriation made by Parliament by law, be utilised for the purpose of providing oil reception facilities and equipments and materials for combating oil pollution at various ports in India and for such other like purposes as the Central Government may, by notification in the Official Gazette, from time to time specify.

Refusal
of port
clear-
ance.

356N. The officer whose duty it is to grant a port clearance for any ship shall not grant the port clearance until the amount of cess payable under section 356M has been paid or until security for the payment thereof has been given to his satisfaction.

3500. (1) The Central Government may, having regard to the provisions of the Convention, make rules to carry out the purposes of this Part.

Power to make rules.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may—

(a) prescribe the specifications of heavy diesel oil for the purposes of sub-clause (ii) of clause (j) of section 356B;

(b) prescribe the equipment to be fitted in Indian ships and other requirements to be complied with by those ships for the purposes of section 356E;

(c) prescribe the forms of oil record books for tankers and other ships, the manner in which such books shall be maintained, the nature of the entries to be made therein, the time and circumstances in which such entries shall be made, the custody and disposal thereof and all other matters relating thereto for the purposes of section 356F;

(d) prescribe the fees which may be levied for inspection of oil monitoring system, oily water separator, oil content metre, crude oil washing system, inert gas system or other equipments or contrivances carried out on board for preventing pollution of the sea by oil and the manner in which such fees may be collected;

(e) specify the officers who shall collect the cess and the manner in which the cess shall be collected.

12. After section 411 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 411A
Powers of the Central Government to protect interests of Indian shipping from undue foreign intervention.

"411A (1) If it appears to the Central Government—

(a) that measures have been taken by or under the law of any foreign country for regulating or controlling the terms or conditions upon which goods or passengers may be carried by sea, or the terms or conditions of contracts or arrangements relating to such carriage, and

(b) that such measures, in so far as they apply to things done or to be done outside the territorial jurisdiction of that country by persons carrying on lawful business in India, constitute an infringement of the jurisdiction which belongs to India,

it may, by an order in writing, direct that this section shall apply to those measures either in whole or to such extent as may be specified in the order.

(2) Where an order issued under sub-section (1) is in force in relation to any measures, it shall be the duty of every person in India who carries on business consisting or comprising of the carriage of goods or passengers by sea to give notice to the Central Government of any requirement or prohibition imposed or threatened to be imposed on him pursuant to such measures so far as this section applies to him, including any requirement to submit any contract or other document for approval thereunder.

(3) Where a notice under sub-section (2) is received from any person or there are grounds to believe that a notice is likely to be

received, the Central Government may, by an order in writing, give to such person directions prohibiting compliance with any such requirement or prohibition as it considers proper for maintaining the jurisdiction of India.

(4) Any directions given by the Central Government under sub-section (3) may be either general or special and may prohibit compliance with any requirement or prohibition either absolutely or in such cases or subject to such conditions, as to consent or otherwise, as may be specified in the order.

(5) If it appears to the Central Government that any person in India has been or may be required to produce or furnish to any court, tribunal or authority of a foreign country any commercial document which is not within the territorial jurisdiction of that country or any commercial information to be compiled from documents not within the territorial jurisdiction of that country and that the requirement constitutes or would constitute an infringement of the jurisdiction which belongs to India, the Central Government may, by an order in writing, give directions to that person, prohibiting him from complying with the requirement except to such extent or subject to such conditions as may be specified in the order."

Amend-
ment of
section
417.

13. In section 417 of the principal Act, in sub-section (1), after the words "sailing vessel", the brackets and words "(other than a sailing vessel solely engaged in fishing for profit)" shall be inserted.

Amend-
ment of
section
435.

14. In section 435 of the principal Act, for clause (o) of sub-section (2), the following clause shall be substituted, namely:—

"(o) the fees which may be levied for the issue or re-issue of certificates of registry, for the survey or inspection of sailing vessels before issue of such certificates, for the inspection of sailing vessels and for all other purposes of this Part and the manner in which such fees may be recovered;"

Insert-
tion of
new
Part
XVA.

15. After Part XV of the principal Act, the following Part shall be inserted, namely:—

PART XVA

FISHING BOATS

Applica-
tion of
Part.

435A. Save as otherwise provided, this Part applies to every Indian fishing boat.

Defini-
tion.

435B. For the purposes of this Part, "Indian fishing boat" means—

(a) every fishing vessel, as defined in clause (12) of section 3;

(b) every sailing vessel, whether or not fitted with mechanical means of propulsion, solely engaged in fishing for profit;

(c) every boat or craft of any other type used solely for fishing which the Central Government may, by notification in the Official Gazette, specify to be a fishing boat for the purposes of this section,

which is owned wholly by persons to each of whom any of the descriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of section 21 applies or which satisfies such other requirements as the Central Government may, by notification in the Official Gazette, specify.

435C. Every Indian fishing boat shall be registered under this Part:

Obliga-
tion to
register.

Provided that any Indian fishing boat registered at the commencement of this Part under Part V or Part XV of this Act or any other law for the time being in force in India shall be deemed to have been registered under this Part:

Provided further that every Indian fishing boat so deemed to have been registered shall be re-registered under this Part within such period from the commencement of this Part as the Central Government may, by notification in the Official Gazette, specify:

Provided also that registration of non-mechanised sailing vessels will commence in different ports on such dates as the Central Government may, by notification in the Official Gazette, specify.

435D. (1) The ports at which registration of Indian fishing boats shall be made shall be such ports or places in India as the Central Government may, by notification in the Official Gazette, declare to be ports or places of registry under this Part.

Port of
regis-
try.

(2) The port or place at which an Indian fishing boat is registered for the time being under this Part, shall be deemed to be her port or place of registry and the port or place to which she belongs.

435E. The Central Government may, by notification in the Official Gazette, appoint an officer to be registrar of Indian fishing boats (hereafter in this part referred to as registrar) at every port or place declared as a port or place of registry under sub-section (1) of section 435D.

Registrars
of Indian
fishing
boats.

435F. An application for the registry of an Indian fishing boat shall be made—

Applica-
tion for
registry.

(a) in the case of an individual, by the person requiring to be registered as owner or by his agent;

(b) in the case of more than one individual requiring to be so registered, by one or more of the persons so requiring or by his or their agent or agents, as the case may be; and

(c) in the case of a company or a co-operative society requiring to be so registered, by its agents;

and the authority of the agent shall be testified in writing, if appointed by an individual under the hand of the person appointing him and, if appointed by a company or a co-operative society under its common seal.

435G. (1) The owner of every Indian fishing boat required to be registered under this Part shall make an application in the prescribed form to the registrar for the grant to him of a certificate of registry in respect of the fishing boat.

Certifi-
cate of
registry.

(2) The owner of every Indian fishing boat in respect of which an application under sub-section (1) is made, shall cause the tonnage of the fishing boat to be ascertained in the prescribed manner.

(3) The registrar may make such inquiry as he thinks fit with respect to the particulars contained in such application and shall enter in a register to be kept for the purpose (hereinafter referred to as fishing boats register) the following particulars in respect of the Indian fishing boat, namely:—

- (a) the name of the fishing boat, the place where she was built and the port to which she belongs;
- (b) the rig, type and tonnage of the fishing boat;
- (c) the number assigned to the fishing boat;
- (d) the name, occupation and residence of the owner of the fishing boat;
- (e) the mortgages, if any, effected by the owner in respect of the fishing boat; and
- (f) such other particulars as may be prescribed.

(4) After the particulars in respect of the Indian fishing boat have been entered in the fishing boats register under sub-section (3), the registrar shall grant to the applicant a certificate of registry in the prescribed form.

(5) The owner of every Indian fishing boat shall pay for each certificate of registry a fee according to such scale as may be prescribed by the Central Government having regard to the tonnage of the fishing boat, but in no case exceeding one rupee per ton of its gross tonnage.

(6) An Indian fishing boat required to be registered under this Part but not so registered may be detained by a proper officer until the owner, skipper, tindal or other person in charge of the fishing boat produces a certificate of registry in respect of the fishing boat.

Particu-
lars relat-
ing to
Indian
fishing
boats to
be paint-
ed.

435H. The owner of every Indian fishing boat so registered shall, before commissioning the fishing boat into service, paint or cause to be painted permanently in the prescribed manner on some conspicuous part of the fishing boat, the name by which the fishing boat has been registered, the number assigned to the fishing boat by the registrar and the port or place to which she belongs, and shall take all steps to ensure that the fishing boat remains painted as required by this section.

Change
of name
of Indian
fishing
boat.

435I. A change shall not be made in the name of an Indian fishing boat registered under this Part except in accordance with rules made in this behalf.

Special
provision
for
Indian
fishing
boats.

435J. Every Indian fishing boat registered under this Part shall carry on board such life saving appliances and fire appliances as are prescribed by rules made under sections 288, 289 and 457 or under any other provision of this Act, subject to such exemptions as may be specially granted in respect of such fishing boat.

435K. (1) No Indian fishing boat shall ply or proceed to sea unless there is in force in respect of that fishing boat a certificate of inspection granted under this Part.

Certificate of inspection.

(2) A certificate of inspection in respect of an Indian fishing boat shall specify—

- (a) the name and tonnage of the fishing boat;
- (b) the name of skipper, tindal or other person in charge of the fishing boat;
- (c) the maximum number of members of crew the fishing boat is certified to carry;
- (d) the safety equipments and appliances the fishing boat is required to carry on board;
- (e) such other matters as the Central Government may think fit to specify.

and shall contain a statement to the effect that her hull, rigging, equipment and machinery where fitted are in good condition.

(3) Every certificate of inspection shall be in force from the date of issue for a period of one year or for such shorter period as may be specified therein:

Provided that when an Indian fishing boat is at sea at the time of expiry of the certificate, the certificate shall continue to be valid until her first arrival at a port or place in India.

435L. (1) Where at any time subsequent to the issue of a certificate of inspection in respect of an Indian fishing boat, the registrar has reason to believe that the fishing boat is not fit to proceed to sea, he may, after giving the owner an opportunity of making a representation, cancel such certificate.

Cancellation, re-issue, etc., of certificate of inspection.

(2) Where at any time subsequent to the issue of a certificate of inspection an Indian fishing boat has undergone material alteration or has met with accident or, where the certificate of inspection has been cancelled under sub-section (1) and the application is made for the re-issue of such certificate or for the grant of a fresh certificate, the registrar may, before re-issuing the certificate or issuing a fresh certificate, as the case may be, cause such fishing boat to be inspected; and if the authority inspecting the fishing boat reports that she is not fit to proceed to sea or that her hull, rigging or equipment are defective such certificate shall not be re-issued or issued until the fishing boat is, in the opinion of such authority, fit to proceed to sea or the defect is rectified to the satisfaction of that authority.

435M. (1) Any surveyor appointed under section 9, any registrar appointed under section 435E or any other officer appointed by the Central Government in this behalf by notification in the Official Gazette may at any reasonable time inspect any Indian fishing boat for the purpose of seeing that she is properly provided with safety equipments and appliances in conformity with the rules referred to in section 435J.

Inspection of safety equipments and appliances.

(2) If the surveyor, or, as the case may be, the registrar or other officer appointed under sub-section (1) finds that the Indian fishing

boat is not provided with the aforesaid equipments and appliances, he shall give to the owner, skipper or tindal or any other person in charge of the fishing boat a notice in writing pointing out the deficiency and also what in his opinion is requisite to remedy the said deficiency.

(3) No Indian fishing boat served with a notice under sub-section (2) shall proceed to sea until it obtains a certificate signed by the surveyor, registrar or other officer appointed under sub-section (1) to the effect that it is properly provided with safety equipments and appliances in conformity with the aforesaid rules.

Regist-
ration of
altera-
tion.

435N. When an Indian fishing boat is so altered as not to correspond with the particulars relating to her entered in the certificate of registry, the owner of such fishing boat shall make a report of such alterations to the registrar of the port or place where the fishing boat is registered, and the registrar shall either cause the alterations to be registered, or direct that the fishing boat may be registered anew, in accordance with such rules as may be made in this behalf.

Trans-
fer of
registry.

435O. The registry of an Indian fishing boat may be transferred from one port or place to another port or place in India on the application of the owner of the fishing boat, in accordance with such rules as may be made in this behalf.

Closure
of regis-
try.

435P. If an Indian fishing boat is lost, destroyed or rendered permanently unfit for service, the owner of such fishing boat shall, with the least possible delay, report the fact to the registrar of the port or place where the fishing boat is registered and also forward to him certificate of registry in respect of the fishing boat; and thereupon the registrar shall have the registry of the fishing boat closed.

Restric-
tion on
trans-
fer of
Indian
fishing
boats.

435Q. No person shall transfer or acquire any Indian fishing boat registered under this Part or any interest therein without the previous approval of the Central Government; and any transaction effected in contravention of this section shall be void and unenforceable.

Mort-
gage of
Indian
fishing
boats.

435R. (1) Every mortgage of an Indian fishing boat or any interest therein effected after the date on which this Part comes into force shall be registered with the registrar.

(2) Every mortgage of an Indian fishing boat or any interest therein effected before the date on which this Part comes into force shall, if subsisting on that date, be registered with the registrar within three months from that date.

(3) The registrar shall enter every such mortgage in the fishing boats register in the order in which it is registered with him.

(4) If there are more mortgages than one recorded in respect of the same Indian fishing boat or interest therein, the mortgages shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is registered with the registrar and not according to the date of each mortgage itself:

Provided that nothing contained in this sub-section shall affect the relative priorities as they existed immediately before the date

on which this Part comes into force as between mortgages of the same fishing boat or interest therein effected before such date which are registered in accordance with the provisions of sub-section (2).

435S. (1) No person shall use or attempt to use the certificate of registry or the certificate of inspection granted in respect of an Indian fishing boat for any purpose other than the lawful operation of that fishing boat.

(2) No person shall use or attempt to use for the operation of an Indian fishing boat, a certificate of registry or a certificate of inspection not granted in respect of that fishing boat.

(3) No person who has in his possession or under his control the certificate of registry or the certificate of inspection of an Indian fishing boat shall refuse or omit without reasonable cause to deliver such certificate on demand to the owner of the fishing boat.

435T. (1) Every owner, skipper, tindal or other person in charge of a mechanised Indian fishing boat of 25 registered tons and above shall maintain or cause to be maintained in the prescribed form a statement of the crew of the fishing boat containing the following particulars with respect to each member thereof, namely:—

- (a) his name;
- (b) the wages payable to him;
- (c) the names and addresses of his next-of-kin;
- (d) the date of commencement of his employment; and
- (e) such other particulars as may be prescribed;

Provided that the Central Government may, if it is of opinion that it is necessary or expedient so to do and for reasons to be recorded in writing, exempt, by general or special order, any Indian fishing boat or class of Indian fishing boats from the provisions of this sub-section

(2) Every change in the crew of the Indian fishing boat shall be entered in the statement under sub-section (1).

(3) A copy of such statement and of every change entered therein shall be communicated as soon as possible to the registrar of the port or place of registry of the Indian fishing boat concerned

435U. (1) The Central Government may make rules to carry out the provisions of this Part

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which applications for certificates of registry shall be made and the particulars which such applications should contain;

(b) the manner in which tonnage of an Indian fishing boat shall be ascertained;

(c) the form in which fishing boats register shall be maintained;

Fraudulent use of certificate of registry or certificate of inspection, etc. prohibited.

Statement relating to crew of Indian fishing boat to be maintained.

Power to make rules respecting Indian fishing boats.

(d) the forms in which certificates of registry and certificates of inspection may be issued;

(e) the fees which may be levied for the issue or re-issue of certificates of registry or certificates of inspection and for all other purposes of this Part;

(f) the manner in which the name, number assigned to the Indian fishing boat and name of the port or place to which she belongs shall be painted;

(g) the manner in which any change may be made in the name of an Indian fishing boat;

(h) any exemption from the requirements relating to carriage of safety equipment and appliances by an Indian fishing boat that may be specially granted under section 435J in respect of such fishing boat;

(i) the manner in which alterations in Indian fishing boats shall be reported and applications for the registry of such alterations in the certificates of registry of Indian fishing boats shall be made, the endorsement of the particulars of alterations on the certificates of registry, the grant of provisional certificates in cases where Indian fishing boats are directed to be registered anew, cases in which Indian fishing boats shall be registered anew, the period for which provisional certificates shall be valid and all other matters ancillary to the registry of alterations;

(j) the manner in which registry of an Indian fishing boat may be transferred from one port or place in India to another port or place in India;

(k) the form in which statement of members of crew of an Indian fishing boat may be maintained;

(l) any other matter which has to be or may be prescribed.

435V. The Central Government may, by notification in the Official Gazette, direct that any provisions of this Act other than those contained in this Part which do not expressly apply to Indian fishing boats shall also apply to Indian fishing boats subject to such conditions, exceptions and modifications as may be specified in the notification.

435W. The Central Government may, by notification in the Official Gazette, require every Indian fishing boat or any specified class of Indian fishing boats to furnish such fishery data to the registrar in such form and at such periodical intervals as may be specified in that notification.

435X. Notwithstanding anything contained in this Part, the Central Government may, by order in writing, and upon such conditions as it may think fit to impose, exempt any Indian fishing boat or class of Indian fishing boats or skipper, tindal or member of crew of such fishing boat or class of fishing boats from any

Appli-
cation
to
Indian
fishing
boats
of other
provi-
sions
relat-
ing to
ships.

Fishery
data to
be furn-
ished by
Indian
fishing
boats.

Power
to
exempt.

specified requirement contained in or prescribed by any rules made in pursuance of any provision of this Part or from any other requirement of this Act extended to Indian fishing boats or to personnel employed on Indian fishing boats by a notification issued under section 435V, if it is satisfied that the requirement is substantially complied with or the compliance with the requirement may be impracticable or unreasonable in the circumstances attending the case.'

16. In section 436 of the principal Act, in sub-section (2), in the Table,—

**Amend-
ment of
section
436.**

(i) against Serial Number 100, in the fourth column, for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(ii) for Serial Numbers 115B, 115C and 115D and the entries relating thereto, the following shall be substituted, namely:—

1	2	3	4
<hr/>			
"115B (a)	If oil or oily mixture is discharged in contravention of sub-section (1) of section 356C—		
(i)	where such discharge is made from an Indian tanker anywhere into the sea;	356C(1)	The master of the tanker shall be liable to fine which may extend to five lakh rupees.
(ii)	where such discharge is made from a foreign tanker anywhere within the coastal waters of India.	356C(1)	The master of the tanker, or if the tanker is unmanned, the person in charge of its operation shall be liable to fine which may extend to five lakh rupees.
(b)	If oil or oily mixture is discharged in contravention of sub-section (2) of section 356C—		
(i)	where such discharge is made by an Indian ship other than a tanker anywhere into the sea;	356(2)	The master of the ship shall be liable to fine which may extend to five lakh rupees.
(ii)	where such discharge is made by a foreign ship other than a tanker anywhere within the coastal waters of India.	356C(2)	The master, or if the ship is unmanned, the person in charge of its operation shall be liable to fine which may extend to five lakh rupees.

1	2	3	4
	(c) If oil or oily mixture is discharged in contravention of sub-section (3) of section 356C.	356C (3)	The master of the off-shore installation if it be a mobile craft or the owner, operator, lessee or licensee of an off-shore installation of any other type shall be liable to fine which may extend to five lakh rupees.
115C	If an Indian ship is not fitted with equipment prescribed under section 356E.	356E	The owner, master or agent of the Indian ship shall be liable to fine which may extend to ten thousand rupees.
115D	(i) If the master of an Indian tanker or other Indian ship fails to maintain an oil record book as required by section 356F or contravenes any rule made under that section;†	356F	The master of the Indian tanker or other Indian ship shall be liable to fine which may extend to five thousand rupees.
	(ii) If any person wilfully destroys or mutilates or renders illegible or prevents the making of, any entry in the oil record book or makes or causes to be made a false entry in such book in contravention of any rule made under section 356F.	356F	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to ten thousand rupees or both.
115E	If master of any ship refuses to certify copy of any entry in the oil record book to be a true copy of such entry as required under sub-section (2) of section 356G.	356G(2)	The master of the ship shall be liable to fine which may extend to one thousand rupees.
115F	If any person fails to take action as required by a notice served on him under sub-section (1) of section 356J.	356J(1)	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to ten lakh rupees or both.
115G	If owner of any Indian ship, tug, barge or any other equipment fails to comply with any order issued under sub-section (1) of section 356L.	356L(1)	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to one lakh rupees, or both and if the offence is a continuing one the offender

1	2	3	4
			shall be liable to a further fine which may extend to ten thousand rupees per day for every day during which the offence continues after conviction."

(iii) after Serial Number 137 and the entries relating thereto, the following shall be inserted, namely:—

1	2	3	4
"137A	If an Indian fishing boat required to be registered under section 435C is not registered in accordance with the provisions of that section.	435C	The owner shall be liable to fine which may extend to one thousand rupees.
137B	If the owner of an Indian fishing boat fails to comply with the provisions of section 435H.	435H	The owner shall be liable to fine which may extend to two hundred rupees.
137	If provisions of section 435I are contravened.	435I	The owner shall be liable to fine which may extend to two hundred rupees.
137D	If provisions of section 435J are contravened.	435J	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.
137E	If provisions of section 435K are contravened.	435K	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.
137F	If provisions of section 435M are contravened	435M	The owner shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.

1	2	3	4
137G	If provisions of section 435N are contravened.	435N	The owner shall be liable to fine which may extend to two hundred rupees and in addition to fine which may extend to twenty rupees for every day during which the offence continues after conviction.
137H	If provisions of section 435P are contravened.	435P	The owner shall be liable to fine which may extend to two hundred rupees.
137I	If any person contravenes the provisions of section 435Q.	435Q	The offender shall be liable to fine which may extend to five hundred rupees.
137J	If any person contravenes the provisions of section 435S.	435S	The offender shall be liable to imprisonment which may extend to three months or fine which may extend to two hundred rupees, or both.
137K	If provisions of section 435T are contravened.	435T	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to two hundred rupees."

Amend-
ments rela-
ting to
referen-
ces to
Act 5 of
1898.

17. The amendments directed in the Schedule (being amendments for substituting for the references in the principal Act to the provisions of, and authorities under, the Code of Criminal Procedure, 1898, references to the corresponding provisions of, and authorities under, the Code of Criminal Procedure, 1973) shall be made in the principal Act.

5 of 1898.

2 of 1974.

THE SCHEDULE

(See section 17)

AMENDMENTS TO THE MERCHANT SHIPPING ACT, 1958

(44 OF 1958)

1. In section 35 of the principal Act, in sub-section (3), for the words "any magistrate of the first class" and "the magistrate", the words "any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be," and "the said Magistrate" shall, respectively, be substituted.
2. In section 132 of the principal Act, in sub-section (3), for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.
3. In section 145 of the principal Act, in sub-section (1),—
 - (a) for the words "any magistrate", the words "any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be," shall be substituted;
 - (b) for the words "the magistrate" at both the places where they occur, the words "such Magistrate" shall be substituted.
4. In section 146 of the principal Act, in clause (c), for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.
5. In section 184 of the principal Act, for the words "a magistrate" at both the places where they occur, the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.
6. In section 187 of the principal Act, in sub-section (2), for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.
7. In section 189 of the principal Act, for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.
8. In section 233 of the principal Act, in sub-section (3), for the words "nearest magistrate", the words "nearest Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be", shall be substituted.
9. In section 279 of the principal Act, in sub-section (4), for the words "presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

10. In section 282 of the principal Act, in clause (s), for the word "magistrates", the words "Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be," shall be substituted.

11. In section 361 of the principal Act, for the words "A magistrate of the first class" and "presidency magistrate", the words "A Judicial Magistrate of the first class" and "Metropolitan Magistrate" shall, respectively, be substituted.

12. In section 372 of the principal Act,—

(a) in sub-section (1), for the words "magistrate of the first class" and "presidency magistrate", the words "Judicial Magistrate of the first class" and "Metropolitan Magistrate" shall, respectively, be substituted;

(b) in sub-section (3), for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted;

(c) in sub-section (4), for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted.

13. In section 383 of the principal Act, in sub-section (2), for the words "presidency magistrate, magistrate of the first class", the words "Metropolitan Magistrate, Judicial Magistrate of the first class" shall be substituted.

14. In section 401 of the principal Act, for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted.

15. In section 402 of the principal Act,—

(a) in sub-section (4), in clause (a), for the word "magistrate", the words "Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted;

(b) in sub-section (5), for the words "the magistrate or the High Court, as the case may be," and "the magistrate", the words "the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court, as the case may be," and "such magistrate" shall, respectively, be substituted;

(c) in sub-section (6), for the words "a magistrate" and "the magistrate", wherever they occur, the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate" and "such magistrate" shall, respectively, be substituted.

16. In section 439 of the principal Act, for the words "presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

17. In section 440 of the principal Act,—

(a) for the words and figures "section 32 of the Code of Criminal Procedure, 1898", the words and figures "section 29 of the Code of Criminal Procedure, 1973" shall be substituted;

(b) for the words "presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

18. In section 442 of the principal Act, in sub-section (1),—

(a) for the words "court or magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(b) for the words "court, magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(c) for the words "justice or magistrate", the words "or justice or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(d) for the words "justice, magistrate", the words "justice or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted.

19. In section 445 of the principal Act,—

(a) in sub-section (1), for the words "court, magistrate" and "a magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" and "such a magistrate" shall, respectively, be substituted;

(b) in sub-section (2), for the words "court, magistrate or other officer" and "court, magistrate, officer", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate or other officer" and "court or Judicial Magistrate of the first class or Metropolitan Magistrate or officer" shall, respectively, be substituted.

20. In section 447 of the principal Act, for the words "A magistrate", the words "A Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The amendments proposed in this Bill to the Merchant Shipping Act, 1958, fall, from the point of view of their objects and reasons, into different categories. The various categories of amendments and the objects and reasons therefor are dealt with in the following paragraphs:—

(1) *Establishing a regime of compensation for oil pollution damage*

The International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) establishes an entirely new regime of compensation and liability on the owners of the ship from which polluting oil escaped or was discharged. The provisions of the Convention do not cast any burden direct or indirect on a contracting State either in its capacity as a flag State or a State importing or exporting oil. In order to give effect to the substantive provisions of this Convention, a new Part XB is being inserted. This will enable India to exercise jurisdiction on foreign ships in our coastal waters (*vide* clause 10 of the Bill).

(2) *Giving effect to the amendments to the International Convention for the Prevention of Pollution of Sea by Oil, 1954*

The International Convention for the Prevention of Pollution of the Sea by Oil, 1954, has already been ratified by India and effect to the provisions contained in the said Convention have already been given effect to by Part XIA of the Act. For giving effect to the amendments to the Convention of 1954, which relate to the ban of discharge of oil or oily mixture anywhere into the sea except at the instantaneous rate of discharge, it is proposed to substitute the existing Part XIA of the Act by a new Part (*vide* clause 11 of the Bill).

(3) *Levy of pollution cess*

The amendments proposed for controlling deliberate discharge and containing accidental escape of oil into the sea put a heavy financial responsibility on the Central Government as it has to provide, among others, adequate facilities for reception of oil residues at the ports. These measures would involve an expenditure which is likely to run into crores of rupees. This expenditure is proposed to be re-imbursed to the Government by levying pollution cess on all ships—Indian or foreign—which carry oil as cargo when they call on Indian ports. It is proposed to give an enabling power to the Central Government to levy cess from a date to be notified by that Government (*vide* clause 11—section 356M).

(4) *Investing powers in the Central Government to protect interests of Indian shipping from undue foreign intervention*

Shipping Conferences are not generally subject to any Governmental control and it is unusual for States to exercise control over International shipping. However, certain maritime countries have adopted a different attitude and asked certain Indian shipping companies to produce documents and records held by them in India. With a view to protecting Indian shipping owners from such arbitrary measures of foreign States violating the jurisdiction belonging to us, it is proposed to include a provision which would enable the Central Government to protect the interests of the Indian companies, *vis-a-vis* undue intervention by foreign countries (*vide* clause 12).

- (5) *Providing for registration and control of Indian fishing boats as defined in new section 435B*

The Bill seeks to insert a new Part XVA to provide for registration and control of Indian fishing boats as defined in new section 435B. This is being done to give effect to the recommendations of the Fisheries Enquiry Committee. Under the proposed amendment it will be obligatory for every owner of an Indian fishing boat to get the same registered at any port or place of registry notified by the Central Government.

- (6) *Enhancing the penalties provided in section 436 of the Act*

It is felt that the penalties at present prescribed for the contravention of the provisions of section 313 of the Act do not seem to have acted as a deterrent. It is, therefore, proposed to enhance the additional fine prescribed against Serial No. 100 in the Table below section 436(2) from Rs. 1,000/- to Rs. 5,000/-. Also, penalties for the contravention of provisions of Part XIA are being enhanced for major pollution offences to the extent of Rs. 10 lakhs and for minor pollution offences to the extent of Rs. 10 thousand. Penalties for contravention of the provisions of new Part XVA, relating to fishing boats, which are akin to sailing vessels, are also being provided (*vide* clause 16 of the Bill).

- (7) *Empowering the Central Government to make rules with respect to levying fees for various services rendered by surveyors to shipping industry*

The Central Government provides services of a number of surveyors and senior officers to the shipping industry. With the adoption of new International Conventions and Protocols by the International Community on maritime matters, particularly in the field of safety of life and property at sea, the protection of maritime environment and training and certification of ship's officers and crew, the workload on the Mercantile Marine Department, which is functioning under the Director-General of Shipping, has increased considerably. This has resulted in the increase of wage bill of technical staff. In order to meet this expenditure in part, the Central Government is being given the power to make rules for levying fees for the services rendered by the Department to the industry. For this purpose it is proposed to amend sections 74, 87, 175, 282, 344 and 435 of the Act.

- (8) *Amendment of section 2 of the Act to apply the Act to all vessels including sailing vessels and Indian fishing boats*

The existing section 2 does not clearly show that the Act would apply to all vessels including sailing vessels and Indian fishing boats. In order to remove this lacuna, it is proposed to amend section 2.

- (9) Incidentally, this opportunity is availed of to replace the references to the Code of Criminal Procedure, 1898 and the functionaries thereunder by references to the Code of Criminal Procedure, 1973 and the functionaries thereunder (*vide* clause 17 of the Bill—Schedule).

The Bill seeks to achieve the above objects.

VEERENDRA PATIL.

NEW DELHI;
The 24th July, 1982.

FINANCIAL MEMORANDUM

Clauses 5, 6, 7, 8, 9 and 14 of the Bill amend sections 74, 87, 175, 282, 344 and 435 of the Merchant Shipping Act, 1958, to enable the Central Government to levy fees for certain matters specified in those provisions. All these provisions would result in the increase of the wage bill of the technical staff of the Mercantile Marine Department. The Bill thus, if enacted, would necessitate additional expenditure on the collection of the said fees which cannot be possibly estimated at present.

2. Clause 11 of the Bill proposes to substitute Part XIA of the Act, consisting of sections 356A to 356-O. Section 356-I of the Bill makes a provision for providing oil reception facilities at certain ports which may be specified by the Central Government by notification in the Official Gazette. Section 356K read with section 356L(2) of the Bill enables the Central Government to take certain measures for preventing or containing oil pollution. Section 356M of the Bill enables the Central Government to levy a cess to be called the Oil Pollution Cess at such rate not exceeding fifty paise as the Central Government may, by notification in the Official Gazette, fix. The cess shall be collected by such officers and in such manner as the Central Government may prescribe in this behalf. Section 356-O(2) (d) enables the Central Government to levy fees for matters specified therein.

Clause 15 of the Bill proposes to insert Part XVA in the Act, consisting of sections 435A to 435X. Section 435E enables the Central Government to appoint Registrars of Indian fishing boats at certain ports or places. Section 435G(5) enables the Central Government to levy fee for the grant of certificate under that section. Section 435U(2) (e) enables the Central Government to levy fees for the issue or re-issue of certificates of registry or certificates of inspection and for certain other purposes of Part XVA. Section 435W requires every Indian fishing boat or any specified class of the Indian fishing boats to furnish any such fishery data to the Registrar in such form and at such periodical intervals as may be specified by notification.

The above provisions of the Bill would involve some expenditure in their implementation. It is, however, difficult to estimate the said expenditure at this stage. However all the expenditure is proposed to be met out of the fees or, as the case may be, cess collected under the aforesaid provisions.

3. The Bill does not involve any other expenditure, whether of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Merchant Shipping Act, 1958 is being amended, *inter alia*, to give effect to certain International Conventions, namely, the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) and amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954.

2. The Government through its Mercantile Marine Department provides the services of surveyors and senior officers to the shipping industry. With the adoption of new International Conventions and Protocols by the International Community on marine matters, particularly in the field of safety of life and property at sea, protection of marine environment and training and certification of ship's officers and crew, the workload on the Department has increased considerably and the wage bill of technical staff has consequently increased. In order to recover the expenditure in part, it is proposed to include provisions in the respective Parts of the Act enabling the Government to make rules for levying fees for the services rendered by the Department to the shipping industry. Since the rule making provisions in respect of various Parts is scattered, it is proposed to amend sections 74, 87, 175, 282, 344 and 435 of the Act. A new Part XB is being inserted and section 352R thereof empowers the Central Government to charge fee for issue of certain certificates. The existing Part XIA is being substituted by a new Part. In the new Part so substituted, section 356-O empowers the Central Government to make rules and it includes power to levy fee as has been done in the aforementioned sections. Similar power is also being given under section 435U in the new Part XVA which deals with the registration of Indian fishing boats and other matters connected therewith.

3. Thus, the matters in respect of which rules may be made under new sections 352R, 356-O, 435U and the amended sections 74, 87, 175, 282, 344 and 435 are matters of detail or procedure. The delegation of legislative power is, therefore, of a normal character.

BILL No. 104 OF 1982

A Bill further to amend the Motor Vehicles Act, 1939.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Motor Vehicles (Amendment) Act, 1982. Short title

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act. and commencement

4 of 1939.

2. In section 7 of the Motor Vehicles Act, 1939 (hereinafter referred to as the principal Act),— Amendment of section 7.

(a) in sub-section (2), for the words “and shall contain the information required by the form”, the words “shall contain the information required by the form and shall be accompanied by three clear copies of a recent photograph of the applicant” shall be substituted;

(b) sub-section (4) shall be omitted.

3. In section 8 of the principal Act, in sub-section (1), for the words, brackets and figures “and, in the case of a driving licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7”, the words, brackets and figures “and one of the photographs referred to in sub-section (2) of section 7” shall be substituted. Amendment of section 8.

Amend-
ment of
section 8A.

4. In section 8A of the principal Act, in sub-section (2),—

(a) in the opening portion, for the words and figure "provisions of section 7", the words, figure and brackets "provisions of section 7 (except the provision requiring the application thereunder to be accompanied by three clear copies of a recent photograph of the applicant)" shall be substituted;

(b) in the proviso, for the words, brackets and figures "sub-sections (3) and (4)", the word, brackets and figure "sub-section (3)" shall be substituted.

Insertion
of new
section
11A.

5. After section 11 of the principal Act, the following section shall be inserted, namely:—

Special
provision
as to
affixation
of photo-
graph
in certain
cases on
driving
licences.

'11A. (1) Every person whose application for the issue or renewal of a driving licence to drive other than as a paid employee or to drive a vehicle other than a transport vehicle is pending before any licensing authority immediately before the appointed day, shall, on or as soon as may be after the appointed day, forward three clear copies of his recent photograph to such licensing authority along with an application in writing for the affixation of such photograph on the driving licence.

(2) A driving licence to drive other than as a paid employee or to drive a vehicle other than a transport vehicle, issued or renewed under this Act before the appointed day shall cease to be effective on the expiry of six months from the appointed day, if it does not cease to be effective otherwise earlier, unless the holder of such licence makes, before the expiry of the said period of six months, an application to any licensing authority for the affixation of his photograph on the driving licence.

(3) An application under sub-section (2) shall give particulars relating to the name of the holder of the driving licence, his temporary and permanent addresses, number and date of issue of the driving licence and the name of the licensing authority by whom the licence was issued and shall be accompanied by the driving licence and three clear copies of a recent photograph of the holder.

(4) No fee shall be chargeable with respect to any application made under this section.

(5) Where the authority to whom an application is made under sub-section (2) in respect of a driving licence is not the authority which issued the driving licence, it shall intimate the fact of affixation of the photograph on the driving licence to the authority which issued the driving licence.

Explanation.—For the purposes of this section, "appointed day" means the date of commencement of section 5 of the Motor Vehicles (Amendment) Act, 1982.

Amend-
ment of
section 24.

6. In section 24 of the principal Act, in sub-section (3), in the proviso, for the words "the letters and figures aforesaid shall be shown", the words "the figures aforesaid shall be shown in Arabic numerals and the letters and figures aforesaid shall be shown" shall be substituted.

Amend-
ment of
section 36.

7. In section 36 of the principal Act,—

(a) in sub-section (1), for the words "a State Government may, with the approval of the Central Government", the words "the Central Government may" shall be substituted;

(b) in sub-section (3), in the proviso, for the words "a State Government" and for the words "the State Government", the words "the Central Government" shall be substituted,

8. After section 69A of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section 69B

"69B. (1) The Central Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to any of the following matters, namely:—

Power of
Central
Govern-
ment
to make
rules.

(a) the width, height, length and overhang of vehicles and of the loads carried;

(b) the size, nature and condition of tyres.

(2) Rules may be made under sub-section (1) governing the matters mentioned therein either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances."

9. In section 70 of the principal Act,—

Amend-
ment of
section 70.

(a) in sub-section (1), after the words "and trailers", the words "with respect to all matters other than the matters referred to in clause (a) or clause (b) of sub-section (1) of section 69B" shall be inserted;

(b) in sub-section (2), clauses (a) and (c) shall be omitted.

10. In section 86 of the principal Act,—

Amend-
ment of
section 86.

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination:

Provided that the driver may, if his licence has been submitted to, or has been seized by, any officer or authority under this or any other Act, produce in lieu of the licence a receipt or other acknowledgment issued by such officer or authority in respect thereof and thereafter produce the licence within ten days at any police station in India which he specifies to the police officer making the demand.

(1A) The conductor, if any, of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination."

(b) in sub-section (3),—

(i) in the opening portion, for the words "licence or certificates, as the case may be", the words, brackets, figures and letter "licence referred to in sub-section (1A) or the certificates referred to in sub-section (2), as the case may be," shall be substituted;

(ii) in the proviso, the words "to a driver driving as a paid employee, or to the driver of a transport vehicle or" shall be omitted.

Insertion
of new
Chapter
VIA.

11. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER VIA

LIABILITY WITHOUT FAULT IN CERTAIN CASES

Liability to
pay com-
pensation
in certain
cases
on the
principle
of no
fault.

92A. (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

Provisions
as to
other
right to
claim
compensa-
tion for
death or
permanent
disable-
ment.

92B. (1) The right to claim compensation under section 92A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 92A and also in pursuance of any right on the principle of fault, the claim for compensation under section 92A shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 92A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and—

(a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

92C. For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 92A if such person has suffered by reason of the accident any injury or injuries involving—

Permanent
dis-
ablement.

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfigurement of the head or face.

92D. The provisions of this Chapter shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to in sub-section (1) of section 92A and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

8 of 1923.

Applicability of Chapter to certain claims under Act 8 of 1923.

92E. The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

Over-riding effect.

12. In section 93 of the principal Act, after clause (b), the following clause shall be inserted, namely:—

Amendment of section 93.

'(ba) "liability" wherever used in relation to the death of or bodily injury to any person includes liability in respect thereof under section 92A;'

13. In section 95 of the principal Act, in sub-section (2),—

Amendment of section 95.

(a) in clause (a), for the words "fifty thousand rupees", the words "one lakh and fifty thousand rupees" shall be substituted;

(b) in clause (b), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;"

(c) in clause (d), for the words "two thousand", the words "six thousand" shall be substituted.

Insertion
of new
sections
109A,
109B and
109C.

14. After section 109 of the principal Act, the following sections shall be inserted, namely:—

Special
provisions
as to
compensa-
tion in
cases of
hit and
run
motor
accidents.

'109A. (1) For the purposes of this section, section 109B and section 109C,—

(a) "grievous hurt" shall have the same meaning as in the Indian Penal Code;

45 of 1860.

(b) "hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) "scheme" means the scheme framed under section 109C;

(d) "Solatium Fund" means the Fund established under subsection (2).

(2) The Central Government may, by notification in the Official Gazette, establish a Fund to be known as the Solatium Fund.

(3) The Solatium Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(4) Notwithstanding anything contained in the General Insurance Business (Nationalisation) Act, 1972 or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall make to the Solatium Fund such contributions as the Central Government may from time to time by order in writing specify, and in addition to such contributions, the said Fund shall consist of—

57 of 1972.

(a) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, provide from time to time;

(b) such sums as the State Governments may from time to time contribute; and

(c) such other sums as may be received (whether by way of refund, gift, donation or in any other manner) for being credited to the Fund.

(5) Subject to the provisions of this Act and the scheme, there shall be paid as compensation out of the Solatium Fund,—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of one thousand rupees;

Provided that where the sum standing to the credit of the Solatium Fund is not adequate for meeting any claim for compensation under this section, such claim may be kept pending for payment till such time as the sum necessary for meeting it becomes available in the Fund.

(6) The provisions of sub-section (1) of section 110A shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

109B. (1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 109A shall be subject to the condition that if any compensation (hereafter in this sub-section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise, so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 109A shall be credited to the Solatium Fund by way of refund.

Refund in certain cases of compensation paid under section 109A.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 109A) or any other law, the tribunal, court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 109A or an application for payment of compensation is pending under that section, and such tribunal, court or other authority shall,—

(a) if compensation has already been paid under section 109A, direct the person liable to pay the compensation awarded by it to pay into the Solatium Fund so much thereof as is required to be credited to that Fund in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 109A, forward the particulars as to the compensation awarded by it to the authority in which the Solatium Fund vests.

Explanation.—For the purposes of this sub-section an application for compensation under section 109A shall be deemed to be pending—

(i) if such application has been rejected, till the date of the rejection of the application, and

(ii) in any other case, till the date of payment of compensation in pursuance of the application.

109C. (1) The Central Government may, by notification in the Official Gazette, make a scheme specifying the authority in which the Solatium Fund shall vest, the manner in which the Fund shall be administered, the form manner and the time within which applications for compensation from the Fund may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering

Scheme for the administration of the Solatium Fund.

and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the Fund and the payment of compensation therefrom.

(2) A scheme made under sub-section (1) may provide that—

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated, with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

(3) Every scheme made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

Amendment of section 110.

15. In section 110 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles” includes claims for compensation under section 92A.

Amendment of section 110A.

16. In section 110A of the principal Act,—

(a) in sub-section (2), the following proviso shall be inserted at the end, namely:—

“Provided that where any claim for compensation under section 92A is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.”;

(b) in sub-section (3), for the words “compensation under this section” the words “such compensation” shall be substituted.

17. In section 110AA of the principal Act, for the words "may claim such compensation", the words, figures and letter "may, without prejudice to the provisions of Chapter VIIA, claim such compensation" shall be substituted. Amendment of section 110AA.
18. In section 110B of the principal Act,— Amendment of section 110B.
- (a) for the words "hold an inquiry into the claim and may make an award", the words "hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 109B, may make an award" shall be substituted;
- (b) the following proviso shall be inserted at the end, namely:—
- "Provided that where such application makes a claim for compensation under section 92A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VIIA."
19. In section 110CC of the principal Act, for the word "Chapter", the word "Act" shall be substituted. Amendment of section 110CC.
20. In section 113A of the principal Act, for the words "five hundred rupees", the words "one thousand rupees" shall be substituted. Amendment of section 113A.
21. After section 113A of the principal Act, the following section shall be inserted, namely:— Insertion of new section 113B.
- "113B. Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."
- Driving vehicles in contravention of section 3 or section 4.
22. In section 115 of the principal Act, in sub-section (1),— Amendment of section 115
- (i) for the words "two hundred rupees", the words "four hundred rupees" shall be substituted;
- (ii) for the words "five hundred rupees", the words "one thousand rupees" shall be substituted.
23. In section 116 of the principal Act,— Amendment of section 116.
- (a) for the words "five hundred rupees", the words "one thousand rupees" shall be substituted;
- (b) for the words "one thousand rupees", the words "two thousand rupees" shall be substituted,

Amend-
ment of
section
120.

24. In section 120 of the principal Act, for the words "three hundred rupees", the words "five hundred rupees" shall be substituted.

Amend-
ment of
section
123.

25. In section 123 of the principal Act, in sub-section (1),—

(i) for the words "one thousand rupees", the words "two thousand rupees" shall be substituted;

(ii) for the words "two thousand rupees", the words "three thousand rupees" shall be substituted.

Insertion
of new
section
127B.

26. After section 127A of the principal Act, the following section shall be inserted, namely:—

Composi-
tion of
certain
offences.

"127B. (1) Any offence [whether committed before or after the commencement of section 26 of the Motor Vehicles (Amendment) Act, 1982] punishable under section 112, section 113, section 113A, section 113B, section 114, sub-sections (1) and (2) of section 115, section 116, section 118, section 120, section 122, section 123, section 124, section 125 or section 127 may, either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence."

Amend-
ment of
the First
Schedule.

27. In the First Schedule to the principal Act,—

(a) in Form A, in Section I, after item (g), the following shall be inserted, namely:—

'I enclose three copies of a recent photograph.'

(b) in Form AA, the brackets, letter and words "(b) three copies of a recent photograph." shall be omitted;

(c) in Form D, for the words "Photograph if necessary", the word "Photograph" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

There has been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown. A number of suggestions have been received for amendment of the Act from the State Governments, Union territory administrations, representative organisations and other persons for making the provisions of the Act more effective. The Law Commission of India, in its Fifty-first Report on Compensation for Injuries Caused by Automobiles in Hit-and-Run Cases, has made certain suggestions with respect to hit-and-run cases. The Law Commission has also made a number of suggestions in its Eighty-fifth Report on Claims for Compensation under Chapter VIII of the Act. The examination of these suggestions would take some time. The more important of these suggestions, which require to be implemented urgently, have been identified and it is proposed to give effect to the same through the present Bill.

2. The Bill seeks to give effect to the following proposals:—

(a) A new Chapter VIIA, providing for payment of compensation in certain cases of accidents without proof of fault or negligence on the part of the owner or the driver of the motor vehicle is being inserted in the Act. Under this Chapter, the owner of the vehicle involved in an accident will be liable to pay compensation of a fixed sum of Rs. 15,000, in respect of the death of a person and a fixed sum of Rs. 7,500 in respect of permanent disablement of any person. For securing this compensation, it will not be necessary to prove any wrongful act or negligence on the part of the owner or the driver of the vehicle. Right to claim the compensation aforesaid is without prejudice to any right to claim a

higher compensation on the basis of the wrongful act or negligence of the owner or the driver of the vehicle. However, the compensation payable by an owner on the basis of wrongful act or negligence on his part would be reduced by the compensation already paid by him under this Chapter. It has also been provided that the claim for compensation under the Chapter should be disposed of as expeditiously as possible. The benefit of the provisions of the Chapter would also be available in cases where compensation is claimed in respect of a motor accident under any other law, as for example the Workmen's Compensation Act, 1923. It may also be mentioned that the owner of a vehicle will have to insure himself against liability to third parties under this Chapter to the same extent as he has to insure himself against liability to third parties in cases where he is in default or negligent (*vide* clauses 11, 12, 15, 16, 17, 18 and 19).

(b) A fascicle of sections is being inserted immediately after section 109 of the Act to provide for compensation in cases of hit-and-run motor accidents. These provisions envisage the establishment of a Solatium Fund by the Central Government for the purpose of paying compensation in cases of hit-and-run motor accidents. The Fund will consist of contributions by the General Insurance Corporation and insurance companies carrying on general insurance business in India, contributions by the Central Government, State Governments and other sums which may be received for being credited to it from any source. Provision is being made for payment of compensation only in cases of death or grievous hurt as defined in the Indian Penal Code. The compensation payable in respect of death of a person in a hit-and-run motor accident will be a fixed sum of Rs. 5,000 while the compensation payable in case of grievous hurt to a person is a fixed sum of Rs 1,000. In the event of the identity of the motor vehicle involved in the accident becoming subsequently found out and compensation being recovered through the Claims Tribunal or court or other authority in respect of the death of or for grievous hurt to any person for which compensation has been paid from the Solatium Fund, the compensation paid from the Solatium Fund will have to be refunded to the Fund. The provision is also being made for the making of a scheme to provide for the authority in which the Solatium Fund shall vest, for the administration of the Solatium Fund and for all matters connected with payment of compensation from the Solatium Fund [*vide* clauses 14 and 18(a)].

(c) It is proposed to make it compulsory for every person driving a motor vehicle to have his photograph affixed on his licence. Suitable provision is also being made for giving sufficient time for existing holders of driving licences to have their photographs affixed on their licences (*vide* clauses 2, 3, 4, 5 and 27).

(d) It is proposed to make it compulsory for persons driving motor vehicles to keep their driving licences in their possession on all occasions while driving. This will enable speedy detection of persons driving vehicles without licences (*vide* clause 10).

(e) With a view to ensuring uniformity in respect of display of figures in the registration marks of vehicles, it is being provided that such figures shall be in Arabic numerals (*vide* clause 6).

(f) The power to prescribe registered laden weights and safe axle weights for transport vehicles, which is at present with the State Governments, is being transferred to the Central Government with a view to securing uniformity (*vide* clause 7).

(g) The power to make rules with respect to specifications for construction, equipment and maintenance regarding length, width, height, etc., size, nature and condition of tyres of vehicles which is at present with the State Governments, is being transferred to the Central Government with a view to achieving uniformity (*vide* clauses 8 and 9).

(h) With regard to third party insurance risk, the insurance liability is, at present, fixed under the Act with reference to the vehicle as a whole. This is proposed to be altered in the case of public service vehicles to provide a limit with reference to the passengers. The limit with respect to the insurers' liability to a passenger involved in an accident in a public service vehicle is being fixed at Rs. 15,000. The existing limits of insurance liability in respect of goods vehicles as also damage to property are proposed to be raised (*vide* clause 13).

(i) A specific offence is being provided for to cover cases of driving of motor vehicles in contravention of sections 3 and 4 of the Act (*vide* clause 21).

(j) With a view to speedy disposal of cases, provision is being made for compounding of certain offences under the Act. This provision would also apply to pending cases (*vide* clause 26).

(k) The punishment by way of fine for offences under sections 113A, 115(1), 116, 120 and 123 are proposed to be raised (*vide* clauses 20 and 22 to 25).

3. The Bill seeks to achieve the above objects.

NEW DELHI;

The 6th August, 1982.

SITARAM KESRI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. TGM(1)/79, dated the 5th August, 1982 from Shri Sitaram Kesri, Minister of State in the Ministry of Shipping and Transport to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Bill further to amend the Motor Vehicles Act, 1939 recommends, under clause (3) of article 117 of the Constitution, its consideration by the Lok Sabha.

FINANCIAL MEMORANDUM

Sub-section (2) of new section 109A as proposed to be inserted in the principal Act by clause 14 of the Bill provides for the establishment of a Fund to be known as the Solatium Fund and sub-section (4) (a) of the said new section envisages the making by the Central Government of contributions to the Fund after due appropriation made by Parliament by law in that behalf. Sub-section (1) of new section 109C as proposed to be inserted in the principal Act by the same clause provides for the making of a scheme by the Central Government for specifying *inter alia* the authority in which the Solatium Fund shall vest and the manner in which the Fund shall be administered. The Solatium Fund is being established for the purpose of making provision for payment of compensation in respect of the death of, or grievous hurt to, persons resulting from hit-and-run motor accidents, that is to say, accidents arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. While the major portion of the contribution to the Fund will be from the General Insurance Corporation and the companies carrying on general insurance business in India, it is estimated that the Central Government may have to contribute about fifteen per cent. of the amount required. The exact amount which will have to be maintained in the Solatium Fund cannot be estimated at this stage as that will depend upon the number of hit-and-run accidents which may take place and also on the number of persons who may have to be compensated from out of the Fund. However, it is estimated that the recurring expenditure by way of contributions by the Central Government to the Fund is likely to be of the order of Rs. 15 lakhs per year and the expenses of the Central Government on the administration of the Fund are likely to be about Rs. 5 lakhs per year. There would be some non-recurring expenditure with regard to the setting up of the office of the authority for administering the Fund. This is likely to be of the order of Rs. 50,000.

2. The Bill does not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill seeks to amend section 36 of the principal Act so as to enable the Central Government, having regard to the matters mentioned therein, to specify, by notification in the Official Gazette, in relation to each make and model of a transport vehicle the maximum safe laden weight of such vehicle and the maximum safe axle weight of each axle of such vehicle. Clause 8 of the Bill seeks to insert a new section 69B in the principal Act so as to enable the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles and trailers with respect to their width, height, length and over-hang of vehicles and of the loads carried by them, and the size, nature and condition of their tyres. These powers at present vest in State Governments. With a view to ensuring uniformity, the Central Government is proposed to be empowered in this behalf.

2. Clause 14 of the Bill seeks to insert new sections 109A, 109B and 109C in the principal Act. The proposed sections provide for compensation in cases of hit-and-run motor accidents, establishment of Solatium Fund for purpose and matters connected therewith. The proposed section 109C empowers the Central Government to make a scheme specifying the authority in which the Solatium Fund shall vest, the manner in which the Fund shall be administered, the form, manner and the time within which applications for compensation from the Fund may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the Fund and the payment of compensation therefrom. It also enables the Central Government to provide, subject to certain limitations, punishment for contravention of any provision of such scheme, for delegation of powers, functions or duties conferred or imposed on any officer or authority by such scheme to any other officer or authority and also to give retrospective effect to any such scheme, but not earlier than the date of establishment of the Solatium Fund and also subject to the condition that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision. Provision has also been made for laying of such scheme before both Houses of Parliament.

3. The delegation of legislative power under the aforementioned provisions relates to matters of procedure or detail. The delegation of legislative power is, therefore, of a normal character.

AVTAR SINGH RIKHY,
Secretary.